



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Bert Ford, Administrator
Texas Liquor Control Board
Austin, Texas

Dear Sir:

Opinion No. O-2257

Re: Whether or not the Texas Liquor Control Board may promulgate, adopt and enforce rules and regulations governing the advertisement of alcoholic beverages by "billboard," "electric signs" and other outdoor advertising methods or devices.

Your request for an opinion upon the above question has been received and considered by this department. We present your question in detail by quoting as follows from your letter:

"The Texas Liquor Control Board is hearing an increasing amount of criticism concerning the wide use in Texas of small, cheap tin beer signs which appear in such great numbers on or about retail premises in the cities and along the highways of this State.

"It is impractical to curb this practice by voluntary agreement. The opinion has been expressed to me that Section 6 (a) of Article I of the Texas Liquor Control Act provides the authority whereunder the Texas Liquor Control Board might by rule and regulation correct the situation.

"In order to have a basis for discussing certain legal aspects of the question, I submit herewith the draft of a form

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of regulation representing substantially the type of restrictions which I think might be helpful.

"I would like very much to have your opinion as to the Board's legal authority to adopt this or similar regulation and will appreciate a reply at your earliest convenience."

At the outset it is advisable to state the general principle that constitutes the foundation upon which any discussion of the powers of an executive administrative body must be based. That is, such bodies are creatures of the Legislature; therefore, in the exercise of their functions, they are bound within the terms of that statutory authority accorded them by their creating agency. Any deviation from their delegated legislative function is normally subjected to judicial correction. Consequently, if the Texas Liquor Control Board has the power contended for herein, it must be found in the statutory provisions creating that board and defining its powers.

Section (a) of the Acts of the 44th Legislature, 1935, 2nd Called Session, p. 1795, ch. 467, Art. I, sec. 6; Acts 1937, 45th Legislature, p. 1033, ch. 448, sec. 6 (Vernon's Annotated Penal Code, Article 666-6 (a)) provides that the Board is:

"To supervise, inspect, and regulate every phase of the business of manufacturing, importation, exportation, transportation, storage, sale, distribution, possession for the purpose of sale, and possession of all alcoholic beverages, including the advertising and labeling thereof, in all respects necessary to accomplish the purposes of this Act. The Board is hereby vested with power and authority to prescribe all necessary rules and regulations to that end; to require the filing of such reports and other data by all persons engaged in any phase of the alcoholic beverage business, which it may deem necessary to accomplish the purposes of this Act; to supervise and regulate all licensees and permittees and their places of business in all matters affecting the general public, whether herein specifically mentioned

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or not, and to authorize its agents, servants, and employees under its direction to carry out the provisions hereof." (Underscoring ours)

Section (f) of the same Article provides that the Board is:

"To require by rule and regulation that any liquor sold in this State shall conform in all respects to the advertised quality of such products; to promulgate rules and regulations governing labelling and advertising of all liquors in strict accordance with the labelling and advertising regulations of the Federal Alcohol Administration; to adopt and enforce a standard of quality, purity, and identity of all alcoholic beverages, and to promulgate all such rules and regulations as shall be deemed necessary to fully safeguard the public health and to insure sanitary conditions in the manufacturing, refining, blending, mixing, purifying, bottling, and rebottling of any alcoholic beverage and the sale thereof." (Underscoring ours)

It is to be noted that whereas section (a) refers to advertising in a very general manner, section (f) attempts a more detailed and elaborate description of the rules and regulations to be prescribed by the Board with respect to the advertisement of alcoholic beverages. Further, we observe that section (f) uses such phrases as "advertised quality", "quality, purity, and identity", "safeguard the public health."

In construing a statute, an ascertainment of the law-makers' intent plays a primary and vital role. To accomplish this, the context of the statute must be construed as a whole, and general words and provisions are to be considered in the light of more particular ones. Further:

"Legislatures, like courts, must be considered as using expressions concerning the thing they have in hand; and it would not be a fair method of interpretation to apply their words to subjects

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not within their consideration, and which, if thought of, would have been more particularly and carefully disposed of."
Sutherland on Statutory Construction, sections 234, 239 and 241.

It seems clear that the Legislature contemplated regulations other than that of the size, shape, character, or location of those various devices employed as a means of attracting the public to some certain dispensary or designed to focus the public's attention upon some particular brand or brands of alcoholic beverages. By passage of this act, they were attempting to provide a remedy for a conceivably greater evil which might arise; namely, the control and regulation of outward representations through advertisements of the quality, purity and identity of alcoholic beverages, thus designing to insure the consumer against being misled by misrepresentations through public advertisement. We so hold.

By reason of the foregoing, therefore, we respectfully advise you that it is our opinion that the Texas Liquor Control Board is not empowered under the present status of the law to promulgate, adopt and enforce rules and regulations governing the use of signs, billboards or other means of advertising alcoholic beverages unless such advertisement incorrectly and falsely represents the quality, purity or identity of an alcoholic beverage, or is of such a nature as might be deemed as detrimental to the public morals.

In conclusion, we wish to point out for your information that the following portion of your proposed rules and regulations is clearly unauthorized:

"Any billboard or electric sign whenever and wherever displayed in a manner not authorized by this rule and regulation shall be considered illegal equipment and contraband and subject to seizure as provided in Section 30, Article I of the Texas Liquor Control Act." (See Article 666-30.)

Article 666-30, Vernon's Annotated Penal Code, applies only to "illegal equipment for manufacturing any alcoholic beverages", thus clearly rejecting any sign or billboard, used

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for purposes of advertisement, from its defined category.

Trusting that the above satisfactorily answers
your inquiry, we remain,

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*

Wm. J. Fanning
Assistant

By *Grundy Williams*
Grundy Williams



OW:LW

APPROVED MAY 23, 1940

George C. Davis

ATTORNEY GENERAL OF TEXAS